

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION II**

CA06-406

December 13, 2006

DONALD GROOM
APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. E711686]

V.

NEKOOSA PAPERS, INC., ET AL.
APPELLEES

AFFIRMED IN PART; REVERSED IN
PART AND REMANDED

The appellant in this workers' compensation case was employed as a maintenance man by appellee Nekoosa Papers in January 1997 when he fell and sustained an admittedly compensable back injury that required four separate surgical procedures to his spine. His claim for permanent total disability benefits was denied by the Commission, which instead awarded permanent partial disability benefits of forty-two percent to the body as a whole, reflecting its findings of fourteen percent anatomical impairment and twenty-eight percent wage loss. On appeal, appellant argues that there is no substantial evidence to support the Commission's finding that he failed to prove permanent total disability, and that there is no substantial evidence to support the Commission's finding of fourteen percent anatomical impairment.

In determining the sufficiency of the evidence to support decisions of the Arkansas Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Where, as here, the Commission has denied a claim because of the claimant's failure to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979).

We hold that the Commission properly could find that appellant failed to prove permanent total disability. "Permanent total disability" is defined as inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2002). In its opinion the Commission found that appellant had obtained the equivalent of a high-school diploma, had received electrical and communications training in the Navy, and had completed a two-year program in heating and air, obtaining a contractor's license. The Commission also found, based on the outcome of a functional capacity evaluation, that appellant was able to return

to full or part-time sedentary work. Finally, the Commission found that appellant demonstrated the physical ability to tend a large acreage and livestock. These findings are supported by the evidence, and we cannot say that the Commission erred in finding that appellant failed to prove he was permanently and totally disabled.

With respect to its determination of anatomical impairment, however, the Commission denied relief by employing an analysis that expressly rejected all evidence of physical impairment that was not objective. We hold that, in so doing, the Commission erred as a matter of law. Medical evidence of the injury and impairment must be supported by objective findings, Ark. Code Ann. §§ 11-9-102 (4)(D) and 11-9-704(c)(1)(B) (Repl. 2002), *i.e.* findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102 (16)(A)(i). (Repl. 2002). There is no question that there were objective findings in the record supporting appellant's claim of back injury and resultant impairment. Nevertheless, the Commission rejected the medical opinions regarding the degree of impairment offered by Dr. Green and Dr. Moore simply because those opinions were based in part on subjective findings. Quite clearly, the analysis engaged in by the Commission disregarded all non-objective evidence simply because it was subjective. We hold that this was an arbitrary rejection of medical evidence. There is no requirement that medical testimony be based solely or expressly on objective findings, only that the record contain supporting objective findings. *Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Although credibility is a matter for the Commission to determine, a determination of credibility based on arbitrary rejection of an entire class of evidence cannot

stand. Consequently, we reverse and remand for the Commission to decide this issue in accordance with the correct law.

Affirmed in part; reversed in part, and remanded.

GRIFFEN and GLOVER, JJ., agree.